FILE COPY

No. [redacted]

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

EDWIN S. KAUFFMAN, *Petitioner*

v.

HOWARD JAMISON, Administrator of the Estate of Mary G. Clark, Deceased, *Respondent*

EDWIN S. KAUFFMAN, *Petitioner*

v.

HOWARD JAMISON, Administrator of the Estate of Thelma J. Graham, Deceased, *Respondent*

EDWIN FOUNDATION CORPORATION, *Petitioner*

v.

HOWARD JAMISON, Administrator of the Estate of Alfred William Fallon, Deceased, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

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Petitioners pray that a writ of certiorari issue to review the judgments of the United States Court of Appeals for the Third Circuit, entered in the above entitled cases on February 26, 1959.

CITATIONS TO OPINIONS BELOW

The opinion of the Circuit Court of Appeals is printed in Appendix B hereto infra, page 6a and is reported in 264 F. 2nd 789. The opinion in the companion case *Corabi* v. *Auto Racing, Inc., et al.*, is printed in Appendix B hereto infra, page 7a and reported in 264 F. 2nd 784.

JURISDICTION

Judgments of the Circuit Court of Appeals were entered on February 26, 1959 (R. pp. 33-A, 35-B, 31-C). The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1254 (1).

QUESTION PRESENTED

Whether federal jurisdiction is improperly or collusively invoked within the meaning of Sec. 1359 of Title 28 U.S.C. by the practice of causing appointments of a non-resident administrator for the sole purpose of supplying the necessary element of diversity of citizenship between the parties.

STATUTE INVOLVED

The statutory provision involved is Section 1359 of Title 28 U.S.C. It is printed in Appendix A infra, page 1a.

STATEMENT

Three suits were instituted in the U. S. District Court for the Western District of Pennsylvania by respondent administrator against petitioners to recover damages for the death of decedents who, along with petitioners, are all residents of the State of Pennsylvania (R. 1-A, B, C). In each case respondent, a

resident of Brewster, Ohio, was appointed administrator of the respective estates following renunciation by each of the resident administrators. The first two suits arise out of an automobile accident occurring near Port Matilda, Pennsylvania. The third suit involves the death of a minor child which resulted when a construction pipe alleged to be negligently stacked rolled on the minor child inflicting mortal injuries in the Borough of Wilmerding, Allegheny County, Pennsylvania.

Petitioners filed motions to dismiss each complaint alleging that Howard Jamison was appointed administrator in each case solely for the purpose of creating diversity of citizenship between the parties and, therefore jurisdiction was improperly or collusively invoked in violation of Section 1359, Title 28 U.S.C. (R. 5-A, 6-B, 9-C). The arguments on the above motions were deferred pending the decision in the state court on petitioners' motion to revoke letters of administration to respondent. (R. 11-A, B). The Register of Wills refused. An appeal to the Orphans Court of Clearfield County, Penna. was noted and later dismissed, the Court holding that the action by the Register of Wills was a proper exercise of its discretion. (App. B. pp. 15a-19a). Thereafter, the United States District Court for the Western District of Pennsylvania entered certificates and orders in all three cases denying the aforementioned motions to dismiss feeling bound by the decision of the United States Court of Appeals for the Third Circuit in *Jaffe* v. *Philadelphia & Western R. Co.*, 180 F. 2d 1010 (1950) (App. B. pp. 1a-5a.)

Appeals to the United States Court of Appeals for the Third Circuit were allowed pursuant to Section

1292 (b), Title 28 U.S.C. The Court of Appeals affirmed, holding that, by reference to a companion case *Corabi* v. *Auto Racing, Inc.*, 3rd Cir. 264 F. 2d 784, (1959) Appendix B, page 7a, the facts herein fall outside the ruling of *Lehigh Mining Co. & Manufacturing Co.* v. *Kelly*, 64 Fed. 401, aff'd., 160 U.S. 327 (1895) and within the ruling of *Black & White Taxicab & Transfer Co.* v. *Brown & Yellow Taxicab & Transfer Co.*, 276 U.S. 518 (1928) and, therefore, the appointment of a non-resident administrator although made only to create diversity between the parties was neither "improper", nor "collusive" within the meaning of Section 1359.

Nevertheless, both the District Court and the Court of Appeals recognized the conflict between their decisions and the decision of the 8th Circuit in the case of *Martineau* v. *City of St. Paul*, 172 F. 2d 777 (1949) (Appendix C infra pp. 19a-24a) which viewed the appointment of a non-resident guardian to create the diversity element as an ineffectual attempt to transmute a purely local controversy into a diversity jurisdiction case.

REASONS FOR GRANTING THE WRIT

1. The decisions of the Court below in the instant case and in the case of *Corabi* v. *Auto Racing, Inc.* (Appendix B, infra page 7a) upon the authority of which this case was decided, are directly in conflict with the decision of the 8th Circuit Court of Appeals in *Martineau* v. *City of St. Paul* (1949), 172 F. 2d 777. This conflict is recognized and the following appears in the District Court's certificates and orders: (Appendix B, infra, 1a)

> "The decisions in this circuit are clear. Nevertheless, a decision of the 8th Circuit in the *Mar-*

tineau v. *City of St. Paul*, 172 F. 2d 777, seems opposite to the law in this circuit, and there is no ultimate decision by the Supreme Court directly on this point, and there are a substantial number of cases pending in this court involving the same question and substantial future litigation seems probable."

And, in the Court of Appeals opinion in *Corabi case infra* (Appendix B, page 7a) appears the following:

"Believing our rulings to be at variance with those of other Courts of Appeals,[1] the court below, concluding that there was a controlling question of law, certified this in an order pursuant to Section 1292(b), Title 28, U.S.C. By our order of October 27, 1958, we granted permission to appeal from the interlocutory order of the court below. * * *"

"[1] For an example see the decision of the Court of Appeals for the Eighth Circuit in Martineau v. City of St. Paul, 172 F. 2d 777 (1949). But cf. McCoy v. Blakeley, 217 F. 2d 227 (8th Cir. 1954). The Supreme Court of the United States has not ruled on this issue."

2. The question presented is of great importance and clearly of public interest since it deals with the now vexing problem of congestion in the federal courts involving diversity jurisdiction cases.

Unquestionably, each of the instant cases involves a purely local controversy in which the diversity element was fabricated through a legal device or scheme to gain access to the federal court. None is a bona fide dispute between citizens of different states. Save for the ingenuity of counsel for respondents in exploiting an apparent weakness in the law these three cases and the thirty-three additional civil actions filed in the District Court below in which respondent was

named as administrator would properly be in the state court (Appendix B, page 6a).

Such abuse as this furthers congestion in federal courts and was criticized in the concurring opinion of Mr. Justice Frankfurter in *Lumbermen's Mutual Casualty Co.* v. *Elbert*, 348 U.S. 48, 53.

3. The decision of the Court below is believed to be erroneous and the conflicting decision of the 8th Circuit Court of Appeals in *Martineau* v. *City of St. Paul*, *supra*, correct. And, as recognized by the Court in the *Corabi* case, the *Matineau* case, *supra*, seems to be supported by this court in the decision of *Lehigh Mining & Manufacturing Co.* v. *Kelly*, *supra*.

The *Lehigh* case concerned the application of Section 5 of the Act of March 3, 1875, 18 Stat. 470, the predecessor to Section 1359, 28 U.S.C., to a transfer of lands by a Virginia corporation to a Pennsylvania corporation which was created for the express and only purpose of supplying the diversity element in order to invoke the jurisdiction of the federal court to settle a land dispute. This court, in affirming the lower court's dismissal for lack of jurisdiction, speaking through Mr. Justice Harlan, adjudged the transfer to be (adopting the language of Mr. Justice Field in *City of Detroit* v. *Dean*, 106 U.S. 537):

> "'a mere contrivance, a pretense, the result of a collusive arrangement to create,' in favor of plaintiff,' a fictitious ground of federal jurisdiction' ".

Similarly, in *Martineau* v. *City of St. Paul*, *supra*, a resident of Illinois was appointed guardian for a minor by a Minnesota Court for the sole purpose of conferring jurisdiction upon the U. S. District Court for the District of Minnesota. The judgment below

dismissing the complaint for lack of jurisdiction was affirmed, the Court concluding its opinion with the following language: (page 780, 172 F. 2d):

> "Even if this controversy were to be regarded as one between the guardian and the defendants, we would still be of the opinion that diversity of citizenship was lacking, since the guardian is a mere agent of the Probate Court of Ramsey County, Minnesota, appointed for the purpose of enforcing a claim of a ward of that court against citizens of Minnesota. We think that a Probate Court of Minnesota, by appointing a nonresident as a guardian for a Minnesota minor, cannot transmute what is purely a local controversy into one between citizens of different states, or confer jurisdiction of the controversy upon the United States District Court for the District of Minnesota."

Also supporting this view is *Cerri* v. *Akron-Peoples Telephone Co.* (N.D. Ohio, 1914) 219 Fed. 285.

Clearly, the underlying purpose of Congress in granting jurisdiction to federal courts in diversity cases is not met here. In enacting such legislation, Congress was motivated by a desire to obviate the potential dangers of local bias. *Bank of the United States* v. *Deveaux*, 5 Cranch 61, 3 L. Ed. 38.

In the instant case the real controversy is local and the de facto litigants are all residents of the state of Pennsylvania. Obviously there would be no local bias if all three actions were instituted in the State Court of Pennsylvania.

The opposing view is set forth in the opinion of *Corabi* v. *Auto Racing, Inc., supra* (Appendix B. p. 7a) and finds support in *Jaffe* v. *Philadelphia & Western RR. Co.*, 3rd Cir., 180 F. 2d 1010, (1950), and

Fallat v. *Gouran,* 3rd Cir. 220 F. 2d 325 (1955). In the *Corabi* case the court equates the word "improper" of Section 1359 with impropriety, such as "improper dress" or the like and concludes that under the facts no impropriety existed. Further, the term "collusive" according to the court connotes "fraud" and inasmuch as there was neither impropriety nor actual fraud proven in appointing Mr. Jamison as administrator in each of these cases, Section 1359 was not violated. The motive for the appointment, it was held, was immaterial.

It should be noted, however, that both the *Jaffe* and *Fallet* cases, *supra,* rely on as authority the decision of this Court in *Mecom* v. *Fitzsimmons Drilling Co.,* 284 U.S. 183 (1931). But the *Mecom* case dealt with an attempt to *avoid* federal jurisdiction by appointment of an administrator who was a resident and citizen of the same state as the defendant after renunciation by the nonresident administratrix thereby destroying the diversity element. The motive that actuated the latter appointment was held to be immaterial.

It is one thing to avoid federal jurisdiction by non-fraudulent means which is not expressly prohibited by Federal law. It is another thing entirely to fabricate federal jurisdiction by purposely causing appointments of a non-resident administrator in violation of an existing Federal law.

Such a construction as the above opposing cases place on Section 1359 renders it meaningless and of little, if any, practical value. Further, it frustrates the clear purpose of the recent Act of the 85th Congress, Public Law 85-554 H.R. 11102, July 25, 1958 which raised the minimum jurisdictional requirement of U. S. District courts to $10,000 and extended the

citizenship of a corporation to the state where its principal place of business is located as well as the state of incorporation, in order to reduce the ever mounting caseload in federal courts.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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